

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 May 2015

Public Authority: The Parole Board
Address: 52 St Anne's Gate
London
SW1H 9AJ

Decision (including any steps ordered)

1. The complainant requested information from the Parole Board relating to its decision to release a named individual from prison.
2. The Parole Board confirmed it held some relevant information but refused to disclose it citing section 44 (prohibition on disclosure) and 40(2) (personal information) of FOIA. During the course of the Commissioner's investigation it additionally cited section 32 (court records).
3. The Commissioner has investigated the Parole Board's application of section 44. His decision is that it was entitled to apply section 44(1)(a) to the withheld information. He requires no steps to be taken as a result of this decision notice.

Background

4. The Parole Board is an independent body that carries out risk assessments on prisoners to determine whether they can be safely released into the community¹.

¹ <https://www.gov.uk/government/organisations/parole-board>

5. Decisions about parole are made by the Board's publicly appointed members. Parole Board members sit on panels of 1 to 3 members, and will either decide cases on the papers, or following an oral hearing².

6. With respect to what happens next, www.gov.uk states³:

"The Parole Board will write to you with their decision. The hearing and full decision will be kept private".

Request and response

7. On 23 October 2014, the complainant wrote to the Parole Board and requested information in the following terms:

"Please provide a copy of the most recent application for parole for Harry Roberts, who was jailed for murdering three police officers in 1966;

Please disclose all Parole Board meeting minutes where the application was discussed;

Please disclose all information held relating to the decision that Harry Roberts can be released from prison".

8. The Parole Board responded on 5 November 2014. In relation to the first part of the request, it said that it does not hold an application for parole for Mr Roberts.

9. With respect to the second and third parts of the request, the Parole Board confirmed that it held some information within the scope of the request. However, it refused to provide it citing the following exemptions as its basis for doing so:

- section 40(2) (personal information)
- section 44(1) (prohibitions on disclosure).

²

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/329169/parole-board-annual-report-2013-14.pdf

³ <https://www.gov.uk/getting-parole/parole-board-hearing>

10. The complainant requested an internal review on 5 November 2014. The Parole Board wrote to him on 2 December 2014 explaining that it would not be carrying out an internal review as there was no one available who was sufficiently senior – and who had not been involved in the original decision to refuse the request - to carry out such a review.
11. In the circumstances, the Commissioner accepted the complaint.

Scope of the case

12. The complainant contacted the Commissioner on 2 December 2014 to complain about the way his request for information had been handled. He disputes the Parole Board's application of exemptions.

13. He said:

"Harry Roberts was convicted of murdering three police officers and was told by the judge that he may never be released....."

"The wider interests of the public and the police - the required "legitimate interest" under the DPA - can only be served by disclosure. These interests are in transparency over this decision and the ability of the public to scrutinise such decisions. It cannot be fair for such important decisions not to be open to public accountability and the anger over this decision is palpable".

14. He told the Commissioner:

"I believe, therefore, there must be a mechanism whereby the Parole Board can be transparent and, ultimately, accountable for the decisions it makes. The FOIA ensures the public's right to know and any restrictions under the DPA can be overcome by the "pressing social need" for disclosure in this case. The 2011 rules, it seems, are being used as a barrier to the disclosure of the requested information while at the same time the authority is releasing information it wants to put into the public domain".

15. As is his practice at the start of an investigation, the Commissioner wrote to the Parole Board explaining that he had accepted the complaint and inviting it to reconsider its handling of the request.
16. Having reviewed its handling of the request, the Parole Board additionally cited section 32 of FOIA (court records).
17. The Commissioner considers the scope of his investigation to be the Parole Board's application of sections 32, 40 and 44 to the withheld

information. The Parole Board describes that information as comprising the Board's decision letter and the attendant panel notes.

Reasons for decision

Section 44 prohibitions on disclosure

18. Section 44 of the FOIA provides that:

"(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

(a) is prohibited by or under any enactment,

(b) is incompatible with any Community obligation, or

(c) would constitute or be punishable as a contempt of court."

19. In this case the Parole Board considers section 44(1)(a) applies.

Is disclosure prohibited by or under any enactment?

20. The Parole Board told the complainant that the Board is bound by the Parole Board Rules 2011 (a Statutory Instrument). It went on to explain that Part 2, Section 14 of the Parole Board Rules 2011 states that:

'Information about the proceedings and the names of persons concerned in the proceedings shall not be made public'.

21. In correspondence with the Commissioner, the Parole Board said:

"The relevant enactment is the Parole Board Rules 2011 (Statutory Instrument 2011 No. 2947), which were made by the Secretary of State in exercise of the powers conferred by section 239(5) of the Criminal Justice Act 2003".

22. Having considered the matter, the Commissioner is satisfied that the rules constitute an enactment.

Is disclosure of the requested information prohibited?

23. The complainant disputes that section 44 can apply. When requesting an internal review, he said:

"In its response the Board reveals that it holds a decision letter and "attendant panel notes" in relation to the Roberts case. The Board has chosen to reveal this information despite the supposed statutory bar. However, when it comes to releasing the content of

the requested information the Board claims it is bound by the 2011 rules. This has made the response somewhat confusing and adds to the impression that the Board does not wish the content of its decisions to be open to transparency and scrutiny”.

24. By way of response, the Parole Board told the complainant:

“The Parole Board considers that Rule 14 does not prevent it from disclosing general information about how Parole Board decisions are made (i.e. that a panel of members take notes at an oral hearing and that a reasoned decision letter is provided to the offender and the authorities). Such procedural information is in the public domain in any event and does not constitute ‘information about the proceedings’”.

25. In bringing his complaint to the Commissioner’s attention the complainant said:

“[Parole Board] has also failed to clarify why the 2011 rules do not apply to some information about the proceedings in this case (which it says it has issued to the media) and not to other information - ie the information I have requested”.

26. The Commissioner considers that the information that has been provided by the Parole Board is generic information about parole proceedings in general. In that respect he notes that the gov.uk website states, for example, that Parole Board decisions are made by its publicly appointed members and that a written decision is produced and sent to the prisoner.

27. Having due regard to the wording of rule 11, the Commissioner notes that the prohibition refers to **the** proceedings (emphasis added).

28. In the Commissioner’s view, it cannot have been intended by the legislators that it was prohibited to provide anyone with any information about parole board proceedings per se as this would render the process impossible.

29. The fact that the Parole Board uses its discretion to make some general information available, for example by way of a press release, does not in his view render the statutory bar invalid.

30. Rather he takes the view that the prohibition relates to the particular proceedings in question as opposed to parole board proceedings in general.

31. Having inspected the withheld information the Commissioner is satisfied that it falls within the broad interpretation of ‘proceedings’. He is also

satisfied that its content relates to the proceedings of a specific Parole Board rather than the parole proceedings in general.

32. The Commissioner therefore finds that the Parole Board correctly applied section 44(1)(a) to the withheld information.
33. Section 44 is an absolute exemption, which means that if information is covered by any of the subsections in section 44 then it is exempt from disclosure. There is no need to consider whether there might be a stronger public interest in disclosing the information than in not disclosing it.

Other exemptions

34. As the Commissioner has decided that section 44 FOIA applies, he has not gone on to make a decision about the Parole Board's application of other exemptions to the same information.

Right of appeal

35. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF